(4) Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal appeal No. 908 of 2005

4599/05

Appellant : (In jail)

Sujay Malik, son of Devendra Nath
caste - Namo Sudra (Bengali),
aged about 23 years,
resident of New Colony P.V. 118,
Police Station Pankhajoore
District Kanker (Chhattisgarh)

ed on 12/12/05
Shri Mukesh Shrivastava
..... Advocate

R. to D. R. (J)

VERSUS

Respondent : The State of Chhattisgarh
Through D. M. Kanker

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE

HIGH COURT OF CHHATTISGARH AT BILASPUR

(23)

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J

Criminal Appeal No. 908/2005

Sujay Malik

Vs.

State of Chhattisgarh

Present:

Shri Pankaj Shrivastava, learned counsel for the appellant.

Shri Ashish Shukla, learned Govt. Advocate/ Addl. Public Prosecutor for the State.

ORAL JUDGMENT

(Delivered on 01-02-2006)

1. This appeal is directed against the judgment dated 2.12.2005 delivered by Shri B. Ram, Addl. Sessions Judge, (F.T.C.), Distt. Kanker (CG) in Sessions Trial No. 457/2003 whereby the appellant was convicted under Section 306 of I.P.C. and was sentenced to undergo rigorous imprisonment for seven years and fine of Rs. 1,000/- and in default of payment of fine to undergo rigorous imprisonment for one year.

2. It is not disputed that deceased Smt. Lipika Malik was married to the appellant about 3 years prior to her death on 16.1.2003. It is also not disputed that Smt Lipika Malik died on 16.1.2003 due to consumption of excessive chloroquin tablets. The deceased was living with her parents since about a year prior to her death and had a girl child.

3. Briefly stated the prosecution story is that the appellant suspected the character of the deceased and denied the parenthood of the child in the womb of Smt. Lipika Malik. It is also alleged that Smt. Lipika Malik was

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repeatedly harassed for having conceived from some other person. After sometime, a daughter was born to Smt Lipika Malik. Thirteen days thereafter, the appellant left Smt Lipika Malika and her daughter at the house of her parents and went to Calcutta. After 6 months, the parents of Smt Lipika Malika requested the appellant to take her home but the appellant did not agree and started preparing for a second marriage. Upon knowing about the aforesaid facts, Smt Lipika Malik became extremely frustrated and consumed excessive chloroquin tablets and committed suicide in the house of her parents. On the basis of aforesaid facts, the appellant was prosecuted under Section 306 of I.P.C. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 23 witnesses. The trial Court relying upon the evidence led by the prosecution convicted and sentenced the appellant as aforesaid in para 1.

4. Learned counsel for the appellant has contended that even if the entire evidence led by the prosecution is accepted, the conviction of the appellant under Section 306 of I.P.C. cannot be sustained. He relied upon *Nanka Vs. State of M.P.* reported in **1999 (1) M.P.W.N. [52]** in support of the above argument. On the other hand, Shri Ashish Shukla, learned Govt. Advocate/ Addl. Public Prosecutor argued in support of the impugned judgment, though formally

5. Section 107 of I.P.C. reads as under:

"107. **Abetment of a thing** – A person abets in doing of a thing, who—

Firstly--- Instigates any person to do that thing; or

Secondly---Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in

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pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly--- Intentionally aids, by any act or illegal omission, in doing of that thing.

Explanation 1.--- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.--- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate, the commission thereof, is said to aid the doing of that act.

It is thus clear that for constituting the offence of abetment, it must be shown by the prosecution that the appellant instigated or intentionally aided the doing of a particular thing. In other words, it must be proved by the prosecution that the accused intentionally instigated the deceased to commit suicide. In other words, the act of suicide committed by the deceased must be the proximate cause of the instigation offered by the accused and it must be shown that the instigation, if any, was so direct, co-related, immediate and proximate with the act of suicide that it can be safely inferred that the deceased committed suicide only on account of such instigation. This is in conformity with the dictum laid down by this Court in *Rakesh Vaishnav Vs. State of M.P.* **2004 (1) CGLJ 324** and *Tek Singh Verema Vs. State of Chhattisgarh* in Criminal Appeal No. 753/2005 vide judgment dated 23.01.2006.

5. In this case, it is not disputed that the deceased was living in her parental home since about a year with her daughter. Although it is true that the prosecution has led evidence to show that the appellant used to suspect the character of the deceased and did not accept parenthood of the child in her womb. Yet, the prosecution has led no evidence to show that at any point of time, the appellant instigated Smt Lipika Malik

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to commit suicide. Since the deceased was living with her parents for about a year prior to her death, the question of any such instigation being offered by the appellant soon before the suicide committed by Smt Lipika Malik does not arise. It appears that out of sheer frustration Smt Lipika Malik committed suicide by consuming chloroquin tablets in excess quantity. This act of the deceased was an escapist attitude towards life and could in no manner constitute an offence under Section 306 of I.P.C. against the appellant. Thus, the conviction of the appellant under Section 306 of I.P.C. and the sentence imposed thereunder cannot be sustained and deserves to be set aside.

6. In the result, the appeal is allowed. Conviction of the appellant under Section 306 of I.P.C. and the sentence imposed thereunder are set aside. The appellant is acquitted. He shall be set at liberty forthwith, if not required in any other case.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya